

AFFIDAVIT OF DIANE BROUGHMAN

I, Diane Broughman, do hereby depose and swear as follows:

1. I am a witness of lawful age. I have personal knowledge of and am competent to testify to the matters stated in this affidavit.

2. I have been employed by Bank of America (the "Bank"), or one of its predecessor banks, for approximately 34 years. I am presently the Baltimore Check Processing Operations Manager responsible for Twilight shift. I have held this position for approximately 20 years.

3. Baltimore Check Processing is part of Item Processing which is part of Transaction Services. It is located in the Bank's Baltimore Operations Center at 225 North Calvert Street in Baltimore.

4. Item Processing is responsible for, among other things, capturing all of the transactions in the Bank's mid-Atlantic region. One of its subgroups, Check Processing, is responsible for processing within a short turn-around time frame all of the checks that are received by the Bank's Branches and pre-encoded customers. It is a 24-hour a day, five day per week, operation with three shifts: Day; Twilight; and Midnight. There is one manager responsible for each shift. There are five areas within each shift each overseen by a supervisor: Reader / Sorter; Set Up & Batch; Transit / Dispatch; Reconciliation; and Reject Re-Entry.

5. When Yekeen Bello came to the Operations Center after Sovran Bank was taken over by NationsBank, now Bank of America, he started in Twilight Transit under Lumell Mont. A few years after Mr. Bello came to the Baltimore Operations Center, Twilight Check Processing went through a reduction in force in which his, among other positions, was slated for layoff. At that time, associates whose positions were being eliminated were given a time period during which they would be allowed to post for other jobs within the Bank through the Bank's posting system. Close to the end of the time allotted time period, I learned that Mr. Bello was not doing

well in his interviews and not being selected for any of the positions for which he had applied. I appealed to my supervisor, Charles Vanneman, that we should try to find some way some way to utilize Mr. Bello because I understood from him that he needed the position to support his family. As a result of this intervention, Mr. Bello was not laid off. Instead, he was re-assigned to work under Phyllis Burkhart, supervisor of the Reconciliation and Reject Re-Entry areas on the Twilight shift.

6. After his transfer, we attempted to train Mr. Bello in various functions including, sorter prep, reject breakdown, and reconciliation, in an attempt to identify work for which he was suitable. However, in these functions, Mr. Bello could not learn his duties and had to ask the same questions repeatedly, had repeated errors, and was unable to attain an acceptable output. Mr. Bello was finally moved to Reject Re-Entry where he was assigned two primary functions: working the stripping machine, which places a blank strip on the bottom of a check that can no longer be read electronically so that it can be encoded with the appropriate information, and monitoring the printers in the printing room to make sure they were clean, had ribbons, and filled with paper.

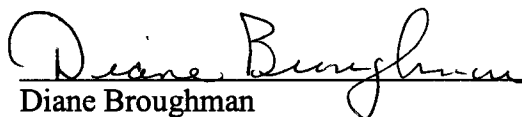
7. Mr. Burkhart reported various concerns she had about Plaintiff's job performance in these functions, in particular his low productivity. In January 2000, I received a call from Ms. Burkhart who informed me that Mr. Bello had been belligerent and dismissive toward her when she attempted to counsel him about picking and choosing among the bundles of checks and then had refused to accompany her to my office. I went to their floor and asked that both Mr. Bello and Ms. Burkhart come to my office. There, we discussed the inappropriateness of picking and choosing among the bundles of checks, the need for Mr. Bello increase his productivity and to pick up his pace, and not to leave his work area. Mr. Bello was given a warning for this conduct as well as his insubordinate behavior when Ms. Burkhart attempted to discuss these issues with

him. This incident and the counseling were documented. However, Mr. Bello refused to sign the documentation. It is signed by Ms. Burkhart and myself. A true and accurate copy of this documentation is attached hereto as Exhibit A.

8. In the first half of 2002, in an effort to cut costs, Item Processing identified areas in which staffing could be reduced. One of the areas that were identified was Twilight Reject Re-Entry, which had a reduced workload due to a decrease in the number of rejected items received by that area. This warranted a reduction of its associate complement by one part-time associate. In order to determine who should be reduced, Ms. Burkhart and I ranked the 12 associates in Twilight Reject Re-Entry based on their skills and performance in eight categories: accountability; client focus; communication; flexibility; initiative; interpersonal skills; teamwork; and technical/job knowledge. These categories had further subcategories. A true and accurate copy of our ranking is attached hereto as Exhibit B. Mr. Bello ranked lower than each of the other 11 associates in each category. Accordingly, Mr. Bello was selected for layoff.

9. No new employees have been hired in the Twilight Reject Re-Entry Area since this reduction in force.

10. I was born on October 23, 1937.


Diane Broughman

Pursuant to 28 U.S.C. Section 1746, I declare under the penalty of perjury that the foregoing is true and correct. Executed this 12th day of November, 2003.

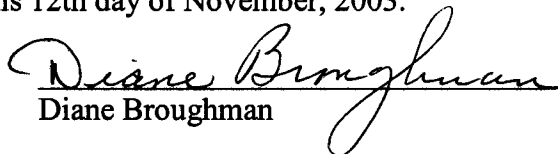

Diane Broughman

EXHIBIT A

Date: January 12, 2000

TO: Associate's File
Yekeen Bello

On January 12, 2000 Yekeen Bello at 8:15 P.M. was approached by his supervisor (Phyllis Burkhart) for picking and choosing work that needed to be done on the bantec strippers. Bello has a tendency to take the smaller bundles of work and leave the larger ones for the other associates. He was communicated to once before about this issue. The procedure for the department is to take the first bundle in the tray and work backwards to the last.

At this point Mr. Bello was boisterous on the floor in the department in front of numerous associates. His statement was that this is a democracy and a free country(in other words he will do what he pleases). The supervisor(Phyllis Burkhart) requested him to stop giving her a hard time and to go back to work. He repeated his statement a second time. At that time I(Phyllis Burkhart) requested that we go down to the managers office. Mr. Bello stated that he was not going.

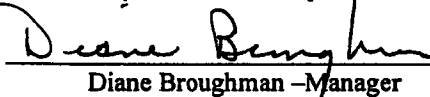
The Manager (Diane Broughman) was paged to come to the Reconciliation Area. She arrived in the work area and was given a summary of what had occurred. It was then requested that Mr. Bello and myself (Phyllis Burkhart) accompany her to the sixth floor managers office and discuss the issue.

During the counseling session Mr. Bello was informed that this is not the first time this was brought to his attention about picking and choosing his work load. He was also counseled prior to this incident that his productivity was below an acceptable level. Mr. Bello, on numerous occasions, has been counseled by the supervisor about not leaving the work area; that during critical times and that he needed to pick up his pace. Mr. Bello has a problem with understanding department procedures and following through with them.

At this time Mr. Bello is being place on a first warning for insubordination to a supervisor and refusing to perform what was asked of him. Any further occurrences of insubordination or refusing to follow workload procedures will result in further disciplinary action.


Phyllis Burkhart-Supervisor

1-12-00
Date


Diane Broughman -Manager

1-12-00
Date

Yekeen Bello-Associate

Date

Associate refused to sign - 1-12-00

EXHIBIT B

Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Accountability												
Holds self and others accountable for meeting deadlines, goals, and objectives	7	8	8	9	4	10	10	9	8	7	7	7
Takes responsibility for outcomes and making decisions	7	8	8	9	5	10	10	9	7	8	7	7
Accepts responsibility for own mistakes	7	8	7	9	4	10	10	9	7	8	6	7
Average	7	8	8	9	4	10	10	9	7	8	7	7
Client Focus												
Views every action and decision in terms of its impact on the client and how it adds to BankAmerica's competitive advantage in the marketplace	7	7	7	7	4	8	8	7	6	6	6	6
Demonstrates unwavering commitment to excellence in delivering services, products, and information valued by our clients	7	6	7	7	4	8	8	7	6	6	7	6
Developes a collaborative partnership among BankAmerica businesses and service units to deliver rapid, efficient and seamless service	7	6	7	7	4	8	8	7	6	6	6	6
Demonstrates an understanding of the client's current conditions and evolving needs and introduces ideas, products, and services in a manner which anticipates their needs and exceeds their expectations	7	7	7	7	4	8	8	7	6	6	6	7
Searches continually for ways to increase client satisfaction, trust and confidence	7	6	7	7	4	8	8	7	6	6	7	6
Ensures that the voice of the client is incorporated in product development and service delivery	7	7	7	7	4	8	8	7	7	6	7	7

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Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Seeks feedback from clients and uses it to improve service quality	7	7	7	7	4	8	8	7	7	6	6	7
Average	7	7	7	7	4	8	8	7	6	6	6	6
Communication												
Conveys information with clarity and ease, both orally and in writing	7	7	7	8	4	9	9	7	6	6	6	7
Tailors message to the audience and delivers it using the appropriate medium (e.g., in person, phone, e-mail, memo)	7	7	7	8	4	9	9	7	6	6	6	6
Listens effectively; seeks first to understand and then to be understood	7	7	8	8	4	9	9	7	6	7	7	7
Keeps others informed	7	7	8	8	5	9	9	7	6	7	7	7
Gives specific and constructive feedback	7	7	7	8	5	9	9	7	6	7	7	6
Average	7	7	7	8	4	9	9	7	6	7	7	7
Flexibility												
Adjusts behavior quickly and effectively to meet a goal, overcome an objection, or resolve a concern	7	8	8	8	4	9	9	8	7	7	6	6
Adapts to changing and often ambiguous circumstances	7	7	7	8	4	9	9	8	7	7	6	6
Handles day-to-day challenges of work in an adaptive and confident manner	7	8	8	8	4	9	9	8	7	7	7	7
Average	7	8	8	8	4	9	9	8	7	7	6	6
Initiative												
Champions new initiatives within and beyond the scope of own job	7	8	7	8	4	9	9	8	7	7	7	6

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Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Seeks out new work challenges	7	8	8	8	4	9	9	8	6	7		6
Seeks opportunities to help others before being asked	7	8	8	8	4	9	9	8	7	7		6
Average	7	8	8	8	4	9	9	6	7	7		6
Interpersonal Skills												
Treats others (e.g. employees, peers, managers, and clients) with the utmost respect and dignity	7	7	7	8	4	9	9	8	7	7		7
Puts people at ease; relates to others in an open, accepting manner	8	7	8	8	4	9	9	8	7	7		7
Shows sincere interest in others and their concerns	8	8	7	8	4	9	9	8	7	7		7
Helps others in need; uses diplomacy and tact to protect their self-esteem	7	7	7	8	4	9	9	8	6	7		7
Average	8	7	7	8	4	9	9	8	7	7		7
Teamwork												
Promotes teamwork effectiveness by facilitating and building on the ideas of others	7	8	8	8	4	9	9	6	7	7		6
Shares information and expertise to achieve desired results	7	8	8	8	4	9	9	6	7	7		6
Works together as opposed to separately or competitively; doesn't have to do it all alone	7	8	8	8	4	9	9	6	7	7		6
Facilitates smooth interactions across organizational units; develops a collaborative partnership among BankAmerica businesses and service units	7	8	8	8	4	9	9	6	7	7		6
Average	7	8	8	8	4	9	9	6	7	7		6

Ranking - Twilight Reject Repair

Initials	JB	RC	DJ	LN	YB	JM	SR	DR	RC	TJ	AJ	PO
Name	Benda	Callaway	Jones	Napora	Bello	Mapp	Rush	Raymond	Carter	Jeffrey	Johnson	Obi
Function												
Technical/Job Knowledge												
Demonstrates knowledge of assigned job function	8	7	8	9	6	9	10	8	7	7		7
Possesses up-to-date knowledge of job procedures and processes related to their job function	8	7	8	9	5	9	10	8	7	7		7
Has an understanding of how their job function interrelates with others within the department	8	7	8	9	5	9	10	8	7	7		7
Average	8	7	8	9	5	9	10	8	7	7		7
Far Exceed: 9 to 10												
Exceed: 6 to 8												
Met: 3 to 5												
Does Not Meet: 0 to 2												